# U.S. Wiretap Evidence Rules Broadened by High Court

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Federal agents who conduct wiretaps in criminal investigations may listen in on a wider range of telephone calls as a result of a U.S. Supreme Court ruling yesterday.

The 7-to-2 ruling means investigators have wide discretion in deciding which calls will be recorded as relevant to a criminal investigation and which calls will be disregarded as purely personal once a court-ordered wiretap has begun.

Two justices disagreed with the majority ruling, saying it erodes the right of American citizens to privacy and allows government agents deliberately to flout the duty imposed on them by Congress."

The dissenting justices, William J. Brennon Jr. and Thurgood Marshall, also said the ruling seems to invite a renewed constitutional challenge to the federal wiretap statute on grounds that it allows such a broad interpretation of its provisions.

The ruling involves a 1970 wiretap that resulted in conviction of District residents Frank R. (Reds) Scott and Vernis L. Thurmon as leaders of a drug ring here.

The central issue in the ruling is known as "minimization." The term is used in federal wiretap laws to require federal agents to listen only to conversations possibly involving criminal conduct once a wiretap has been installed, and to disregard clearly personal calls.

Yesterday's ruling by the Supreme Court ends more than eight years of litigation over the wiretap, which was placed on the N Street NW apartment of Geneva Jenkins Jan. 24, 1970. The tap ended one month after it was installed, and 22 persons were arrested in connection with an alleged narcotics conspiracy in which 14 persons were ultimately indicted.

Defense attorneys immediately began raising questions about the compliance of federal agents with the "minimization" requirement of the wiretap laws. The attorneys showed U.S. District Judge Joseph C. Waddy that only 40 percent of the intercepted calls related to any alleged narcotics conspiracy. The other calls covered a wide range of topics, and included wrong numbers, calls to the recorded weather message and calls between Geneva Jenkins and her mother.

Waddy said the wiretap evidence could not be used, since it amounted to "indiscriminate use of wire surveillance" prohibited by previous court rulings.

The U.S. Court of Appeals reversed Waddy, saying he relied too strongly on the percentage figure and said he should have delved more deeply into how reasonable it was for agents to minimize their amount of listening.

When the case came back to him, Waddy again blocked the use of wiretap evidence after finding that the agents "made no attempt" to comply with federal minimization requirements even though they knew about them.

The government appealed again, and the U.S. Court of Appeals again reversed Waddy. The court said again that Waddy's inquiry and findings had been too narrow, and this time the appellate court analyzed the calls and said the evidence could be used against the defendants.

The case was sent back to Waddy, and the defendants went to trial without a jury. Scott, Thurmon and others were found guilty of narcotics violations and sentenced to prison, and the appellate court upheld their convictions.

The case then made it to the Supreme Court on the defendants' contention that the failure of the agents to attempt to minimize their listening of phone conversations violated the federal wiretap laws.

"Congress . . . made it clear that the focus was to be on the agents' actions, not their motives," Justice William Rehnquist said for the majority. He said each wiretap case should ultimately be decided on its own facts, but that it is wrong to rely on percentage figures in automatically suppressing wiretap evidence.

He said agents at the start of a wiretap investigation may not be familiar with the conversations and might therefore be interested in listening to more conversations before determining if some calls are pertinent to their investigation.

Rehnquist said callers may speak in codes or guarded language, as well. "In all these circumstances, agents can hardly be expected to know that the calls are not pertinent prior to their termination," he said.

p In a wide-ranging narcotics investigation, such as the one involving Scott and Thurmon, "even a seasoned listener would have been hard pressed to determine with any precision the relevancy of many of the calls before they were completed," Rehnquist continued.

Brennan said in his dissent that the court "eviscerates" congressional safeguards against invasion of privacy. He said it "mark() the third decision in which the court has disregarded or diluted congressionally established safeguards designed to prevent government electronic surveillance from becoming the abhorred general warrant which historically had destroyed the cherished expectation of privacy in the home."

Brennan said agents in the Scott and Thurmon case "shamelessly violated" the minimization requirement cremental denigration" of the privacy placed in criminal investigations only after approval by a federal judge of a detailed affidavit showing the need for such an extraordinary step. Once the tap is in place, agents sit with two tape recorders running—one as an original and one as a work copy—and monitor each call on the line.

If a call appears unrelated to the criminal investigation, agents are supthus quit monitoring the conversation, law enforcement officials said.